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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financial performance reports of the International Tribunals for the Former Yugoslavia and Rwanda for the period from 1 January to 31 December 2001

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Comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

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Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the financial performance reports of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (A/57/367) and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/57/368), the first performance reports for the period from 1 January 2002 to 31 December 2003 of the International Tribunal for the Former Yugoslavia (A/57/480) and the International Tribunal for Rwanda (A/57/481 and Corr.1), revised estimates arising in respect of Security Council resolution 1431 (2002): ad litem judges (A/57/482), conditions of service for the ad litem judges of the International Tribunal for Rwanda (A/57/587), long-term financial obligations of the United Nations with regard to the enforcement of sentences (A/57/347) and the comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/56/853). During its consideration of the reports, the Advisory Committee met with the Registrars and the Acting Deputy Prosecutor, as well as with other representatives of the Tribunals and of the Secretary-General, who provided additional information.

I. International Tribunal for Rwanda

A. Financial performance report for Rwanda for the period from 1 January to 31 December 2001, first performance report for the period from 1 January 2002 to 31 December 2003 and revised estimates arising in respect of Security Council resolution 1431 (2002): ad litem judges

2. The Advisory Committee welcomes the improvements made in the presentation of the reports in line with the Committee's recommendations in paragraph 3 of its report of 29 November 2001 (A/56/666).

3. By its resolution 55/226 of 23 December 2000, the General Assembly appropriated an amount of $93,974,800 gross ($85,607,600 net) for the International Tribunal for Rwanda for the period from 1 January to 31 December 2000. As indicated in table 1 of the financial performance report for 2001 (A/57/368), recorded expenditures for the period amounted to $96,639,300 gross ($87,487,600 net), resulting in a deficit of $2,664,500 gross ($1,880,000 net).

4. The Advisory Committee notes that an overexpenditure of $6,555,500, or 85 per cent, was incurred under contractual services. This is the largest overexpenditure, and, as indicated in paragraph 29 of the financial performance report for 2001 (A/57/368), it is mainly attributable to additional requirements for

defence counsel fees, which total $5,967,300. Of that total, $1,685,700 relate to services rendered in 2000, but submitted and settled late in 2001, and $4,281,600 to higher-than-projected costs for defence teams in 2001.

5. The first performance report for the period from 1 January 2002 to 31 December 2003 shows projected increased requirements of $2,177,700 over the initial appropriation of $197,127,300 (see A/57/481, schedule 2). The Advisory Committee notes from paragraph 16 of the report that increases in expenditure for defence counsel for 2000 and 2001 amounted to $3,539,500 and $5,967,300, respectively (see para. 4 above). For the period from 1 January 2002 to 31 December 2003, appropriations for defence counsel total $17,118,100, representing an increase of $5,128,500. Based on current expenditure patterns, a further increase of $3,700,000 over the appropriation is projected.

6. Upon request, the Advisory Committee was provided with the following information regarding appropriations and expenditures for defence counsel:

Year	*Appropriation*	*Expenditure as at 30 Sept. 2002*	*Projections to December 2002*	*Variance*	*Percentage increase over appropriation*
2000	5 624 000	9 163 500		3 539 500	67
2001	6 065 600	12 032 900		5 967 300	98
2002	7 839 500	5 953 800	5 587 200	3 701 500	47

The Committee is very concerned by the fact that defence counsel costs continue to escalate. The Committee acknowledges that it may not be possible to avoid increased costs because of the inevitable expansion of legal and judicial activities that were not foreseen at the time the budget was prepared. However, such circumstances are not always clearly identified in the performance and budget reports. For example, the Committee had been informed that overexpenditure for defence counsel in 2000 was due largely to poor monitoring and claims processing (see A/56/666, para. 7). Accordingly, the Committee had recommended that the Board of Auditors carry out a special evaluation of the effectiveness of the means available, including staff and non-staff assets, to manage, monitor and control the expenses of the Tribunal's legal aid system (ibid., para. 44).

7. In its report of 30 September 2002 (see A/57/439, paras. 21-24), the Advisory Committee commended the Board's findings and recommendations on the legal aid system of the Tribunal (see A/57/5/Add.11, chap. II, paras. 41-74). The Committee also commends the Registrar for administrative measures he has taken on this issue and the judges of the Tribunal for steps they have taken, including exercising greater control over judicial proceedings, the introduction of pre-trial proceedings and the imposition of sanctions for unwarranted judicial and administrative conduct. **However, the Committee remains concerned that it has thus far received no convincing information, neither from the Board of Auditors nor from the Tribunal itself, that the Tribunal has within it an effective capacity of "staff and non-staff assets to manage, monitor and control the expenses of the Tribunal's legal aid system" (see para. 6 above). In the opinion of the Committee, unless this matter is properly addressed, including the question of the methodology for determining indigency (see A/57/439, para. 22), expenses**

for defence counsel could continue to escalate for reasons other than those related to unavoidable expansion of the activities of the Tribunal.

8. The Advisory Committee enquired as to the status of work of the panel, referred to in paragraph 29 of the financial performance report for 2001 (A/57/368), which has been established to review the defence counsel regime in place and to make recommendations for improvements to the arrangements. It was informed that the Tribunal had requested consultant services from a group of Member States and that by January 2003 the Tribunal would be in a position to consider further measures for implementation as the result of the recommendations of the panel. The Committee was informed that these services would be financed from within the available budget resources of the Tribunal. **The Committee welcomes this response to its recommendation contained in paragraph 23 of its report on the reports of the Board of Auditors (A/57/439) and requests that information be provided in the next budget submission to address the observations of the Committee set out in paragraph 7 above. The Committee requests that the cost and manner of financing of the above-mentioned services be reported in the context of the next budget estimates of the Tribunal.**

9. The Advisory Committee notes with concern the information provided in paragraph 19 of the financial performance report for 2001 (A/57/368) that the actual overall vacancy rate at the end of the year was 26 per cent. However, upon enquiry, the Committee was informed that, as at the date of the hearings, the vacancy rate was 19 per cent and that a rate of 15 per cent was projected by the end of the year. The Committee was also informed that the Tribunal had received a considerable number of applications for advertised positions. In this connection, the Committee recalls its recommendation for flexibility in recruitment, as stated in paragraph 29 of its report dated 29 November 2001 (A/56/666).

10. In paragraphs 28 and 29 of the same report, the Advisory Committee expressed concern about the protracted period of vacancy for two posts in the Office of the Prosecutor, namely, the Deputy Prosecutor and the Chief of Prosecution, and the impact that situation had on the effectiveness of the prosecutorial and investigative activities of the Tribunal. Upon enquiry, the Committee was informed that the posts still had not been filled, but that they would be filled by January 2003. Similar information has been given to the Committee in the past concerning the imminent filling of these posts. Upon enquiry, the Committee was informed that, when the posts were last advertised, a total of 36 applications were received from candidates from 22 countries for the post of Deputy Prosecutor and 16 applications were received from candidates from 13 countries for the post of Chief of Prosecution as at 10 October 2002. Of these, nine applicants for the post of Deputy Prosecutor and four for the post of Chief of Prosecution had been shortlisted, but no selection had been made.

11. **By the end of 2002, the post of Chief of Prosecution will have been vacant for more than two years and that of Deputy Prosecutor for approximately 19 months. The Advisory Committee is not persuaded by the reasons given by the representatives of the Secretary-General to explain this situation, nor is it convinced that a lack of qualified candidates to perform the functions as advertised is the main reason for the prolonged vacancies. Indeed, during the course of its meetings with representatives of the Secretary-General, the**

Committee was informed that there was an abundance of qualified candidates in the region and elsewhere.

12. **The Advisory Committee is concerned that this situation may already have adversely affected the capacity of the Office of the Prosecutor in Arusha and in Kigali to develop, in a timely manner, the coherent coordinated investigation and prosecution policy that is so essential for the implementation of the completion strategy of the Tribunal. Taking into account the fact that the main Office of the Prosecutor is in The Hague, the absence of a Deputy Prosecutor and Chief of Prosecution for such a protracted period may also have adversely affected the day-to-day leadership, supervision and guidance of the offices in Arusha and Kigali.**

13. The Advisory Committee recalls that, in accordance with article 15, paragraph 3, of the statute of the Tribunal, staff of the Office of the Prosecutor are to be appointed by the Secretary-General on the recommendation of the Prosecutor. Upon enquiry, the Committee was informed that a management review of the Office of the Prosecutor had never been carried out. **With a view to learning from the experience, the Committee recommends that the Office of Internal Oversight Services conduct a management review of the Office of the Prosecutor, paying particular attention to the problems which have arisen in filling these two critical posts.**

14. The Advisory Committee enquired about the recruitment status of the posts approved by the General Assembly in its resolution 56/248 of 24 December 2001, on the recommendation of the Committee (see A/56/717), for audit and investigation services in the two Tribunals. The Committee was informed that the posts had not yet been filled, but that the interview process was under way and that it was expected that the recruitment process would be completed as of the beginning of 2003.

15. As indicated in paragraph 19 of the first performance report for the biennium 2002-2003 (A/57/481), additional resource requirements for 2003 in connection with the appointment of a maximum of four ad litem judges in the Tribunal are estimated at $5,060,100 gross ($4,605,400 net), inclusive of 46 new support staff, supplies, equipment and services. This estimate derives from the report of the Secretary-General on revised estimates arising in respect of Security Council resolution 1431 (2002) on the establishment of ad litem judges in the International Tribunal for Rwanda (A/57/482), which, in turn, have been calculated on the assumption that the General Assembly would approve the application of the conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia to the ad litem judges of the International Tribunal for Rwanda (the Committee's comments on the conditions of service of the ad litem judges of the International Tribunal for Rwanda are contained in para. 23 below). The Advisory Committee recalls that the original request by the Tribunal for ad litem judges was for a maximum of nine (see A/56/265-S/2001/764, appendix), rather than the four approved by the Security Council. The Committee further recalls the statement in paragraph 12 of the comprehensive report on the results of implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/56/853) that the request by the Tribunal for ad litem judges "is considered critical to the Tribunal's completion of trials at first

instance by 2008 instead of the originally envisaged date of 2017". Thus, the speed with which the Tribunal is able to complete its mandate would depend, among other things, on the trial capacity available to it, including the number of authorized ad litem judges.

16. The Advisory Committee was informed that the Security Council had approved the maximum of four judges, subject to an informal understanding that that decision would be later reviewed. However, the representatives of the Tribunal informed the Committee that the Tribunal was in a position to use only three, six or nine judges. Under these circumstances, the rationale for the Security Council's decision to authorize up to four ad litem judges was not readily apparent to the Committee. The Committee was informed that three judges would be used and that the President of the Tribunal would request the Council to review the matter again, with a view to obtaining approval for an additional five ad litem judges. Subsequent to its meetings with the representatives of the Tribunal, the Committee was informed that the President of the Tribunal had made a statement to the General Assembly to that effect on 28 October 2002. The Committee was informed that she had also made a statement on the matter to a closed meeting of the Security Council.

17. **Taking into account the vacancy situation in the Tribunal, the Committee does not believe that all 46 additional posts will be required. Accordingly, the Committee recommends that the number of support staff for the ad litem judges be reduced from the 46 requested in paragraph 8 of the report of the Secretary-General to 36. Additional requirements could be met through redeployment. The Committee therefore recommends a reduction of $282,100 gross ($245,500 net). This is equivalent to one P-4, three General Service (Other level) and six Local level posts. The related appropriation would be $4,778,000 gross ($4,359,900 net). Should future action by the Security Council increase the number of ad litem judges, the Secretary-General can, if necessary, submit a proposal for additional support staff.**

18. The Advisory Committee was informed that the Tribunal's investigations would be completed in June 2003. The Committee points out that the completion of investigations would mean an attendant reduction in the number of posts in the Tribunal, which would offset, in some measure, the increase in posts necessitated by the use of ad litem judges.

19. An additional expenditure of $3.7 million is projected for the defence counsel costs referred to in paragraph 16 of the first performance report for 2002-2003 (A/57/481); this is based on "current expenditure patterns at the Tribunal". **In the opinion of the Advisory Committee, the projected additional expenditure of $3.7 million for defence counsel is too tentative to warrant immediate authorization of funds (see para. 21 below).**

20. As indicated in paragraph 39 of the financial performance report for 2001 (A/57/368), the funding of the shortfall in respect of the overexpenditures incurred in 2001 is addressed in the first performance report for the biennium 2002-2003 (A/57/481). The proposals of the Secretary-General for action to be taken by the General Assembly in respect of the additional requirements arising from the elements described in the performance reports are set out in paragraph 20 and in the draft resolution contained in annex IV to the first performance report (A/57/481).

21. **With regard to paragraph 2 of the draft resolution contained in annex IV to the first performance report, the Committee recommends a reduction of $282,100 gross ($245,500 net) in the amount to be appropriated in connection with the establishment of ad litem judges. The Committee recommends that the Assembly approve the financing of the unassessed expenditure for 2001 of $2,664,500 gross ($1,880,000 net) from the unencumbered balance in the Special Account for the Tribunal, as proposed in paragraph 3 of the draft resolution. With regard to paragraph 4 of the draft resolution, the Committee notes, as indicated in schedules 1 and 2 and paragraph 13 of the first performance report, that favourable exchange rates for the period from January to October 2002 have led to a projected reduction of $13,237,800 (of which $10,165,800 is under the Registry) in the estimates for the biennium 2002-2003, and the trend may continue. Accordingly, and taking into account what is stated in paragraph 19 above, the amount of $2,177,700[1] need not be appropriated at this time nor financed from the unencumbered balance in the Special Account (see A/57/481, para. 18). However, the Committee recommends that the General Assembly authorize the Secretary-General to incur commitments up to that amount, should it be deemed necessary, and report thereon in the context of the next performance report.**

22. The Advisory Committee requests that a timetable for implementation of the completion strategy of the Tribunal and precise information on plans to hand over cases for trial by national or third-country jurisdictions be provided in the next budget estimates, together with information on the financial implications and the time frame for any expenditures involved.

B. Conditions of service for the ad litem judges of the International Tribunal for Rwanda

23. The Advisory Committee notes that the conditions of service for the ad litem judges of the International Tribunal for Rwanda proposed by the Secretary-General in his report (A/57/587, paras. 29-34) are based on the provisions of General Assembly resolution 56/285 of 27 June 2002, by which the Assembly endorsed the recommendations of the Committee (see A/56/7/Add.2) with regard, inter alia, to the emoluments and other conditions of service of the members of ad litem judges of the International Tribunal for the Former Yugoslavia. **The Advisory Committee recommends approval of the proposal in paragraph 28 of the report of the Secretary-General (A/57/587) that the conditions of service approved by the Assembly for the ad litem judges of the International Tribunal for the Former Yugoslavia be applied to the ad litem judges of the International Tribunal for Rwanda. Accordingly, the Committee also recommends approval of the proposed conditions of service as set out in paragraphs 29 to 34 of the report.**

24. **The Committee further recommends that the various provisions which have been approved by the General Assembly concerning conditions of service**

[1] The amount of $2,177,700 is based on: increases in requirements resulting from changes in inflation assumptions ($11,983,900) and increased provision for defence counsel costs ($3,700,000), offset in part by decreases resulting from changes in exchange rates ($13,237,800) and adjustments to standard salary costs ($268,400).

of judges of the Tribunals, including ad litem judges, be compiled and issued in a readily usable format.

II. International Tribunal for the Former Yugoslavia: financial performance report for the period from 1 January to 31 December 2001 and first performance report for the period from 1 January 2002 to 31 December 2002

25. The Advisory Committee welcomes the report of the Secretary-General on the financial performance of the Tribunal for the Former Yugoslavia for the period from 1 January to 31 December 2001 (A/57/367). As recommended by the Committee, the format and content of the report follow that of the Tribunal budget estimates and include, as appropriate, programme and performance information. The summary table is accompanied by tables for each of the three organs of the Tribunal, including expenditure by object of expenditure. The report also includes performance workload as compared with benchmarks used to prepare the estimates.

26. The expenditure during the period from 1 January to 31 December 2001 totalled $108,901,300 gross ($95,982,500 net), as compared with the total appropriation authorized by the General Assembly of $113,768,600 gross ($101,343,300 net), including the commitment authority of $5,280,900 gross ($4,899,400 net). Reduced requirements for the period resulted in underexpenditures of $4,867,300 gross ($5,360,800 net), or 4.3 per cent and 5.3 per cent of the total gross and net amounts, respectively, authorized by the General Assembly (see A/57/367, table 1). The difference between the assessed budget and the expenditure for the period is $413,600. The Secretary-General requests that the General Assembly take note of the utilization of the commitment authority and of the associated financing for the unassessed expenditure of $413,600 that would be drawn from the balance currently available in the Special Account for the Tribunal (see A/57/367, para. 33).

27. Significant variances between appropriations (including commitments) and expenditures, by object of expenditure, for the Tribunal as a whole, are shown in table 1 of the performance report (A/57/367) and explained in the text. These include overexpenditures under posts (net of staff assessment) ($2,943,300), other staff costs ($529,900), furniture and equipment ($723,500), alteration of premises ($532,400) and staff assessment ($496,000). These were offset by underexpenditures of $664,800 under salaries and allowances of judges, $118,500 under consultants and experts, $1,662,000 under travel, $4,289,900 under contractual services, $3,134,400 under general operating expenses, $900 under hospitality and $221,900 under supplies and materials.

28. The Advisory Committee notes from paragraphs 21 and 22 of document A/57/367 that the underexpenditure of $4,289,900 under contractual services includes savings of $2,225,400 related to defence counsel, owing to a reduced number of detainees. The appropriation of $14,050,000 for defence counsel was based on the assumption that the average number of detainees in 2001 would increase to 50, but the actual average number of detainees was 36. **The Committee trusts that the next estimate will be prepared more accurately. Furthermore, in the future, information should be provided on productivity, including savings,**

if any, from the implementation of control and monitoring measures that have been introduced recently to improve the management of the legal aid programme of the Tribunal.

29. Regarding verbatim reporting in the French language, the Advisory Committee notes the failure to secure a contract with a commercial firm, as stated in paragraph 21 of document A/57/367, and the subsequent use of temporary assistance funds for meetings to hire short-term French-speaking court reporters, in addition to short-term translators and interpreters (see A/57/367, para. 18). **The Committee requests that, in the next budget estimates, funds be requested for the most cost-effective means considered by the Registry to deliver this type of service. That is to say, if it is considered preferable to hire short-term staff rather than to utilize contractual services, funds should be requested under this item rather than under the item for contractual services. The Committee trusts that all available options will be explored, including off-site solutions and those using modern technology.**

30. The Advisory Committee welcomes the information on voluntary contributions and their use included in annex II to document A/57/367. **The Committee requests that, in the future, information be also provided on the number of interns and their use along the lines set out in paragraph 3 (h) of annex II.**

31. The first performance report for the period from 1 January 2002 to 31 December 2003 is presented pursuant to General Assembly resolution 56/247 A of 24 December 2001. The report includes a requirement for an additional appropriation in the amount of $14,060,300 gross ($13,053,300 net). The General Assembly is requested to approve a total revised appropriation of $262,986,500 gross ($236,223,100 net) and, taking into account the unencumbered balance available in the Special Account for the Tribunal of $14,473,900 gross ($13,053,300) as at 31 December 2001, the unassessed expenditure in 2001 of $413,600 (see para. 26 above) and the amount assessed for 2002 of $120,374,300 gross ($107,037,050 net), to approve the balance to be assessed for 2003 of $128,551,900 gross ($116,132,750 net) (see A/57/480, annex III).

32. The Advisory Committee notes the budgetary assumptions in the revised estimates shown in annex I to document A/57/480 and welcomes the performance information on benchmarks used to estimate resource requirements (A/57/480, paras. 3-4 and annex II). The proposed additional requirement of $14,060,300 gross ($13,053,300 net), based upon the adverse experience in respect of exchange rates ($4.4 million), inflation ($5.8 million) and standard costs ($3.3 million) (A/57/480, para. 9), also includes the amount of $591,500 gross ($478,000 net) for two additional trial teams in the Prosecution Division, resulting in an increase in the total number of trial teams from 10 to 12 (A/57/480, para. 13 and schedules 1-2).

33. The Advisory Committee recalls that, in paragraph 36 of its report dated 28 November 2001 on the budget for the Tribunal for the biennium 2002-2003 (A/56/665), it indicated that when ad litem judges were approved one additional trial team had also been approved. In his report on the biennial budget for the Tribunal for the biennium 2002-2003, the Secretary-General requested two additional trial teams to bring the total to 12 trial teams, 6 of which would be in trial and 6 would be involved in trial preparation (see A/56/495, table 8 and A/56/495/Add.1, annex IV, paras. 6-18). Taking into account the resources approved for the Prosecution Division for 2001 and the additional resources recommended for approval for other

staff costs for the biennium 2002-2003, the Committee recommended approval of only one additional trial team composed of a senior trial attorney (P-5), two trial attorneys (co-counsel) (P-4), one legal officer (P-3), one case manager (General Service) and one trial support assistance. This would have provided the Tribunal with a capacity of six trial and five preparatory teams.

34. As indicated in paragraph 15 of document A/57/480, the General Assembly, in its resolution 56/247 B, approved the staffing table for the Tribunal for the biennium 2002-2003, as recommended by the Committee, except for the establishment of the additional trial team mentioned above. The General Assembly requested the Tribunal to undertake a review of its requirements in respect of the trial teams needed in the Prosecution Division. **Taking into account the information presented during the hearings, the Committee reiterates its recommendation contained in paragraph 36 of its report A/56/665 that one additional trial team be approved for the Prosecution Division of the Tribunal.**

35. **In the context of the evolving completion strategy, the Advisory Committee was informed that the Office of the Prosecutor plans to complete investigations by 2004. That being the case, the Committee is of the view that the Tribunal should start to plan early (i.e., in 2003) for the reduction or reallocation of the investigation staff capacity of the Office of the Prosecutor.**

36. The Advisory Committee notes the statement by the President of the Security Council, dated 23 July 2002 (S/PRST/2002/21), in connection with the Security Council's consideration of the report on the judicial status of the Tribunal (S/2002/678). The Security Council endorsed the report's broad strategy for the transfer of cases involving intermediary and lower-level accused to competent national jurisdictions as likely to be in practice the best way of allowing the International Tribunal for the Former Yugoslavia to achieve its current objective of completing all trial activities at the first instance by 2008. **In this connection, the Advisory Committee requests that the Secretary-General provide detailed information on the potential financial obligations of the United Nations for the enforcement of sentences with regard to transferred cases, in the context of the next estimates for the Tribunal.**

III. Enforcement of sentences

37. The Advisory Committee welcomes the information provided in the report of the Secretary-General on long-term financial obligations of the United Nations with regard to the enforcement of sentences (A/57/347). The Committee understands that the report does not attempt to cover all eventualities, that it is preliminary and that the related costs indicated are based on assumption rates currently applied by the United Nations. The Committee notes that the report contains no information on costs related to cases transferred to national or third-country jurisdictions.

38. As indicated in paragraphs 11 to 13 of the report, a model agreement on the enforcement of the Tribunal's sentences was prepared by the Registry of the Tribunal in consultation with the Office of Legal Affairs. The Advisory Committee notes that, during negotiation with three countries, changes were made to the model agreement. However, notwithstanding the terms of the agreements, the States concerned have indicated that they are not in a position to accept convicted persons from the Tribunal unless the United Nations agrees to bear at least certain costs, in

particular the cost of their upkeep. The effectiveness of the model agreement is therefore not evident.

39. The information provided in the report indicates that the practice in this area is developing in an ad hoc manner, rather than on the basis of an agreed plan of action with prior involvement of the competent organs of the United Nations. The Advisory Committee therefore welcomes the information contained in paragraphs 42 and 43 of the report, which is intended to alert both the General Assembly and the Security Council to future mechanisms which may be needed to deal with issues arising in the course of sentence enforcement.

40. The Advisory Committee was informed that the agreements entered into thus far do not contain provisions for the Tribunals to bear the cost of upgrading prison facilities. The Committee recalls paragraph 49 of its report dated 29 November 2001 (A/56/666), in which it requested an explanation of the legal and financial reasons for the use by the Tribunal of only $43,300 of the $213,500 authorized for 2001 for the upgrading of prisons, following a ruling by the Office of Legal Affairs. The Committee notes the explanation in paragraph 8 of the report that "the Tribunal did not fully utilize these resources because of uncertainty stemming from an interpretation that the statute did not include provisions for upgrading prison facilities". However, paragraph 17 of the report of the Secretary-General (A/57/347) appears to indicate that such an expenditure by the United Nations would be lawful and proper. The Committee sought clarification of this matter, but is still without assurance that the decision of the General Assembly would be carried out. **The General Assembly may wish to give further policy guidance on this matter.**

41. **The Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General, on the understanding that future budgetary requests on enforcement of sentences would be considered on a case-by-case basis, taking into account the legal, administrative and financial justification provided in support of each request. Given the importance of the issues raised and their relevance to the successful implementation of a completion strategy, the Committee draws attention to the need for the General Assembly and the Security Council to address the issues raised in paragraphs 42 and 43 of the report.**

IV. Comprehensive report on the results of the implementation of the recommendations of the Expert Group

42. The report contained in document A/56/853 is submitted in response to the request of the General Assembly in its resolution 54/239 B of 15 June 2000. It outlines the results of the implementation of the recommendations of the Expert Group appointed to conduct a review of the effective operation and functioning of the International Tribunal for Rwanda (General Assembly resolutions 53/212 and 53/213 of 18 December 1998).

43. The Advisory Committee welcomes the report but believes the information contained in it could have been organized differently highlighting over all results by themes and changes that have taken place. The presentation is, in the Committee's opinion, scattered on the basis of the action taken on each recommendation of the expert group. The Committee notes that the report was issued in March 2002 and

recalls that, during its visit to The Hague and Arusha in May and June 2002, it was informed that some of the observations in the report had already been overtaken by events.

44. Nevertheless, the Advisory Committee notes from paragraphs 4 to 12 and 136 to 140 of document A/56/853 that considerable changes have been made in the two Tribunals, as a result of the recommendations of the Expert Group. Some of the major changes are the appointment of ad litem judges and the exercise of greater control by judges over judicial activities of the Tribunals before and during the trials. Indeed, the appointment of ad litem judges has been pressed by the Tribunals as a means to increase their capacity in order to complete their mandates by 2010 and not at a later date, as originally envisaged (i.e., by 2017 in the case of the International Tribunal for Rwanda and 2018 for the International Tribunal for the Former Yugoslavia). As stated in paragraph 139 of document A/56/853, the report of the Expert Group and the continuing process of implementation of its recommendations have made a critical contribution to the fulfilment of the Tribunal's vision.

45. The Advisory Committee intends to continue to follow up on the implementation of the recommendations of the Expert Group in the context of its review of the budget estimates for the biennium 2004-2005 for the Tribunals. In the meantime, the Committee recommends that the General Assembly take note of the report of the Secretary-General.